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LEWIS, RICE & FINGERSH, LC			EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES B. MELESKY

Appeal 2009-004503
Application 10/024,478
Technology Center 3600

Decided: October 29, 2009

Before WILLIAM F. PATE III, STEVEN D.A. McCARTHY, and
STEFAN STAICOVICI, *Administrative Patent Judges.*

WILLIAM F. PATE III, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 14, 22, 24, 25, 27-29, 31 and 32. Claims 17 and 21 are allowed. Claims 1-13, 15, 16, 18-20, 23, 26, and 30 have been cancelled. These are all of the claims in the application. We have jurisdiction over the appeal under 35 U.S.C. §§ 134 and 6.

The claimed subject matter is directed to a two-piece cover assembly for covering and insulating an existing attic access opening. The opening may be equipped with a ceiling hatch or pull-down ladder.

Claim 14 is further illustrative of the claimed subject matter. A copy of the claim is appended to this decision.

REFERENCES

The references of record relied upon by the examiner as evidence of obviousness are:

Anghinetti	US 3,896,595	Jul. 29, 1975
Fuller	US 4,281,743	Aug. 04, 1981
Helbig	US 4,312,423	Jan. 26, 1982
Waters	US 4,344,505	Aug. 17, 1982
Daw	US 4,832,153	May 23, 1989
Porter	US 5,628,158	May 13, 1997

REJECTIONS

Claims 14 and 27-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Waters in view of Helbig.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Waters in view of Helbig and further in view of Anghinetti.

Claims 24 and 31-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Waters in view of Helbig and further in view of Fuller and Porter.

Claim 25 is rejected under 35 U.S.C. §103(a) as being unpatentable over Waters in view of Helbig and further in view of Daw.

ISSUE

Appellant argues, *inter alia*, that the prior art fails to disclose or teach a cover comprising first and second orthogonally-disposed continuous seals on all four sides of the rectangular cover when the cover member is closed (Reply Br. 2). Accordingly, the issue for our consideration is whether the Appellant has established that the Examiner erred in rejecting the claimed subject matter under § 103. This issue turns on whether the cited prior art discloses first and second continuous seals on all four sides of the sealed attic opening.

FINDINGS OF FACT

1. Waters discloses an insulating cap for insulating disappearing attic stairways. The body or cap 10 is comprised of side members 20, 22 and end members 24, 26 secured together in a rectangular frame. See col. 2, l. 63 – col. 3, l. 9. A top or cover 28 is provided having substantially of the same outer dimensions as the rectangular frame. *Id.* The top or cover is manufactured of the same material as the frame. *Id.* The sheet or top cover 28, is hingedly attached along one edge 29, of the rectangular frame. *Id.* Waters differs from the claimed subject matter in that Waters fails to disclose a first and second L-shaped continuous seal extending completely around the rectangular frame.
2. Helbig also discloses a pre-fabricated insulating unit. The unit is formed of the packing material used when a folding stairway is shipped to be installed in an attic. Referring to the embodiment disclosed in Figs. 5-7, Fig. 5 shows a shipping container formed of an

outer carton 22 and containing two shipping members or elements 24 and 28. See col. 3, l. 49 – col. 4, l. 7. These members or elements are preferably formed of Styrofoam. See col. 3, ll. 6-9. When the folding stairway and the inserts are removed from the carton and are to be installed in the attic, the inner member 24 is rested on the rectangular peripheral frame 12 of the folding stair. See col. 3, l. 61 – col. 4, l. 7 and Figs. 6 and 7. The outer or second element 28, rest only on the roof joists 26, inasmuch as there is no framing member that extends between the roof joists 26 other than the stairway peripheral frame 12. *Id.* Therefore, although Helbig teaches first and second continuous seals on the ends, as shown in the cross section in Fig. 7, Helbig does not possess first and second continuous seals on the sides of the stairway, since second element 28 is not supported on the sides. Therefore, it is our finding that Helbig does not teach a closure member including a depending central portion engaging the internal frame opening so as to provide first and second *continuous* seals when the cover member is closed.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art,

(2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) wherein evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

The Supreme Court stated that in cases involving more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, it will be necessary to "determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.* at 1740-41. The Court noted that "[t]o facilitate review, this analysis should be made explicit." *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")).

ANALYSIS

As our factual findings, above, make clear, neither Waters nor Helbig disclose the argued limitations of a first and second *continuous* seal of a removable closure member and a frame. In this instance, we give the claim term "continuous" its ordinary and customary meaning of "unbroken" or "contiguous." Waters discloses a one part seal that is continuous while Helbig discloses a first and second L-shaped seal which extends only on the ends of the claimed enclosure and not on the sides. Thus, neither reference

teaches or suggests the feature of the first and second *continuous* seal wherein the seals are generally orthogonal to one another. We have further reviewed the other prior art cited by Examiner, but can find therein no teaching or suggestion for the missing element in Appellant's claimed subject matter. In view of this missing teaching or suggestion, we are constrained to reverse the rejections of all of the claims on appeal.

CONCLUSION

Appellant has established that the Examiner erred in rejecting claims 14, 22, 24, 25, 27-29, 31 and 32 inasmuch as the applied prior art fails to show first and second orthogonal seals that extend continuously around the closure and frame.

REVERSED

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APPENDIX

(Claim 14)

14. An insulating cover assembly in combination with an existing attic access, the combination comprising:

an existing attic access having a surrounding structure integral to a ceiling of a building and providing access to said building's attic, said existing attic access defining an existing attic access opening therethrough and having an existing trap door for closing said existing attic access opening;

an insulating cover placed on said surrounding structure and including:

a continuous frame having spaced side walls and spaced end walls and which frame is formed of a free standing insulating material having an upper surface and a lower surface, said frame defining a frame opening therethrough, said frame opening being aligned with said existing attic access opening, said frame being of a size and configuration so as to enclose said existing attic access opening when said lower surface is supported on said surrounding structure; and

a removable closure member formed of a free standing insulating material, said removable closure member not being bonded to any portion of said continuous frame and said removable closure member including:

a depending central portion, said depending central portion being sized and shaped to fit within said frame opening defined by said frame and frictionally and snugly engage each of said side walls and said end walls of said frame inside said frame opening to create a first continuous seal with said frame when said removable closure member is positioned on said frame in a covering relationship with respect to said frame opening; and

an upper portion forming flanges, said flanges extending laterally outward relative to said depending central portion, said flanges being sized and shaped to frictionally and snugly engage an upper surface of each of said side walls and end walls of said frame to create a second continuous seal with said frame when said removable closure member is positioned on said frame in covering relationship with respect to said opening defined by said frame;

wherein said closure member is not hinged to and detaches from said frame when said first continuous seal and said second continuous seal are broken by a force applied to said removable closure member through said frame opening, leaving said frame enclosing said existing attic access opening; and

wherein said first seal and said second seal are generally orthogonal to each other when said removable closure member is positioned on said frame in covering relationship with respect to said opening defined by said frame.